

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDREW DAVIS, SR.,

Plaintiff,

v.

DEBORAH HOOPER, DIANE DUNMON,
LINDA THOMAS,

Defendants.

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C. A. No. 1:07-cv-632 GMS

TRIAL BY JURY OF TWELVE
DEMANDED

**DEFENDANTS DEBORAH HOOPER, DIANE DUNMON, AND LINDA
THOMAS' MOTION TO STRIKE DOCKET ITEM 8**

Pursuant to Federal Rules of Civil Procedure 12(f), defendants Deborah Hooper, Diane Dunmon, and Linda Thomas, hereinafter “defendants”, respectfully move for an order striking D.I. 8 – Plaintiff’s Reply Brief in support of Motion to Proceed re: [4] Motion to Dismiss for Failure to State a Claim. In support of their motion, the defendants offer the following:

1. Pursuant to the Local Rule 7.1.2 of the United States District Court for the District of Delaware, motions may be briefed with (1) an opening brief, (2) an answering brief and (3) a reply brief.

2. Local Rule 7.1.2 (c) states that “no additional briefs, affidavits, or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court ...”. The only exception to this rule is updating the Court on recent opinions decided after the filing of the brief. *Id.*

3. Defendants filed a Motion to Dismiss, D.I. 4, on November 9, 2007.

4. Plaintiff filed an Answer to the Motion to Dismiss, D.I. 6, on December 12, 2007.

5. Defendants filed a Reply in Support of their Motion to Dismiss, D.I. 7, on December 20, 2007.

6. Plaintiff filed a Surreply - Plaintiff's Reply Brief in support of Motion to Proceed re: [4] Motion to Dismiss for Failure to State a Claim, D.I. 8, on January 23, 2008.

7. Plaintiff's Reply Brief in support of Motion to Proceed re: [4] Motion to Dismiss for Failure to State a Claim does not update the Court on recently decided opinions and only serves to further argue plaintiff's position through a medium that is not permitted by Local Rule 7.1.2.

8. In *Chambers v. Doe*, 453 F. Supp. 2d 858, 861 fn.3 (D.Del. 2006), this Court denied a *pro se* plaintiff's surreply because it raised issues outside the briefing schedule and denied the defendants the full opportunity to explore and address the arguments.

9. For the above stated reasons, defendants request that this Court strike Docket Item 8 - Plaintiff's Reply Brief in support of Motion to Proceed re: [4] Motion to Dismiss for Failure to State a Claim.

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BY: /s/ Dana Spring Monzo
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ORDER

AND NOW, this ____ day of _____, 2008, upon consideration of *Defendants Deborah Hooper, Diane Dunmon, and Linda Thomas' Motion to Strike* and any response thereto,

IT HEREBY IS ORDERED AND DECREED that the motion is **GRANTED** and Docket Item 8 - Plaintiff's Reply Brief in support of Motion to Proceed re: [4] Motion to Dismiss for Failure to State a Claim is stricken from the record.

BY THE COURT:

J. Sleet

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DEMANDED

CERTIFICATE OF SERVICE

I, Dana Spring Monzo, Esquire do hereby certify that on this 25th day of January, 2008, two copies of the foregoing **DEFENDANTS DEBORAH HOOPER, DIANE DUNMON, AND LINDA THOMAS' MOTION TO STRIKE** were served upon the following CM/ECF and regular U.S. First Class Mail, postage prepaid:

Andrew Davis, Sr.
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*Deborah Hooper, Diane Dunmon and
Linda Thomas*